discriminatory conditions or limitations on the resale of any of its services.[129] In March of 1999, the Staff indicated that the data provided by SWBT was not sufficiently reliable to evaluate SWBT on this checklist item as follows:

> SWBT cannot show that it provides resale services in a nondiscriminatory manner. SWBT has implemented various performance measures to measure compliance with the various checklist items. This includes resale. However, there are a number of inconsistencies in the resale performance measures between SWBT witness Dysart's direct testimony[130] and the update to Mr. Dysart's Schedule 2.[131] For example, when subtracting out certain orders for no fieldwork provisioning of plain old telephone service (POTS) residential service,[132] the updated Schedule 2 actually increased the amount of orders for July 1998. The amount went from 1,722 to 2432 orders.[133] This problem was also apparent with regard to the same type of orders in St. Louis for July, August, and September, 1998.[134] Mr. Dysart admitted that there was an error in the data, and that the data needed to be validated.[135] Also, subtracting only 32 orders (from 1,572 to 1,540) for POTS provisioning in Kansas City for September 1998 resulted in the average days to process POTS orders dropping from 1.54 to 0.31[136] Mr. Dysart admitted that there was a problem with the accuracy of the data, either with the old data, the new data, or both.[137]
>
> Based on the above, there are flaws with the performance measures and/or the data collected for those measures. Therefore, due to unreliable data, SWBT is unable to demonstrate that it has met this checklist item, because it is impossible for Staff to make a proper analysis of SWBT's compliance with this checklist item. SWBT must have the data and performance measures validated so that

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[129] *SBC Texas Order*, at ¶ 387.

[130] Ex. 16.

[131] Ex. 119.

[132] Tr. 2103-05. This refers to orders where the CLEC had requested a due date that was later than the next available date provided by SWBT. Tr. 2099.

[133] Tr. 2100.

[134] Tr. 2101.

[135] Tr. 2101.

[136] To account for the change in the number of processing days, the average processing time for the 32 orders eliminated from the data would have to be 60.7 days. Tr. 2106.

[137] Tr. 2106, 2107.

meaningful data can be presented to the Commission for it to make an informed decision.[138]

It is the Staff's current position that SWBT does impose unreasonable and discriminatory conditions or limitations on the resale of its existing customer specific arrangements. Although SWBT has represented to this Commission that it will do in Missouri what Bell Atlantic is doing in New York with regard to customer specific arrangements, until SWBT has a concrete and specific legal obligation to freely assign existing customer specific arrangements without triggering termination penalties, SWBT cannot make the showing required of it to satisfy this checklist item.

As related by the Staff in its comments filed in response to the November 8-9, 2000, Question & Answer Session, according to the FCC, the New York Commission had determined that Bell Atlantic was required to freely assign customer specific arrangements and that such an assignment did not trigger termination liabilities.[139] The FCC found this sufficient in New York to meet the requirements of the Act.

The record in this case before the Commission in this case includes no such obligation upon SWBT. While SWBT has included in its M2A an obligation to resell customer specific arrangements,[140] it has not included a requirement that there be no termination penalties or transfer fees in its contingent offer designated "M2A." Thus, SWBT fails Checklist Item 14—Resale, with or without the benefit of its latest M2A proposal.

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[138] Staff's Post-Hearing Brief filed March 24, 1999, pp. 65-66.

[139] *Application of Bell Atlantic New York for Provision of In-Region, Inter-LATA Services in New York*, CC Docket No. 99-295, FCC 99-404, Memorandum Opinion and Order, 15 F.C.C.R. 3953 (December 22, 1999) *aff'd. sub nom AT&T v. FCC*, No. 99-1538 Slip. Op. (D.C. Cir. August 1, 2000). ("*Bell Atlantic New York Order*").

[139] *SBC Texas Order*, n. 1147, p. 198.

[139] 47 U.S.C. § 271(d)(3)(C).

[140] M2A, Attachment 1: Resale, p. 1, ¶ 1.3

47 U.S.C. § 272

Does Southwestern Bell Telephone Company meet the requirements of 47 U.S.C. § 272?

Yes.

The Staff's position remains that same as stated in its response to SWBT's updated record filed with the Commission on or about August 28, 2000. That response follows:

> Section 271(d)(3)(B) of the Act requires any Section 271 authority granted by the FCC to be carried out "in accordance with the requirements of section 272." Technically the requirements of Section 272 are not part of the Act's competitive checklist. However, prior to being authorized to provide interLATA services, the Bell Operating Company ("BOC") must demonstrate that the Section 272 structural and nondiscrimination safeguards are in place. The FCC set standards for compliance with Section 272 in its *Accounting Safeguards Order*[141] and its *Non-Accounting Safeguards Order.*[142]
>
> To comply with the requirements of section 272, a BOC must provide interLATA telecommunications services through a separate affiliate from its local exchange company. The FCC has set out the details of Section 272 compliance in Part 53 of Title 47 of the Code of Federal Regulations.
>
> Specifically, the BOC long distance affiliate (1) must operate independently from the BOC local exchange company; (2) must maintain separate books, records, and accounts from the BOC local exchange company; (3) must have separate officers, directors and employees from the BOC of which it is an affiliate; (4) must be treated on an arms-length, nondiscriminatory basis by the local exchange company; and (5) cannot obtain credit under any arrangement whereupon default the creditor would have recourse against the assets of the BOC.
>
> The FCC has clarified the relationship between a BOC's joint-marketing rights and its equal-access obligations by concluding that a BOC may market its long distance affiliate's service during inbound calls as long as it also "offers to

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[141] *Report and Order, Implementation of the Telecommunications Act of 1996. Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, December 23, 1996.

[142] *Report and Order, Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, December 23, 1996.

read, in random order, the names and, if requested, the telephone numbers of all available interexchange carriers."[143]

The FCC stated in the Order approving SWBT's Texas 271 Application that "Based on the record, we conclude that SWBT has demonstrated that it will comply with the requirements of section 272."[144]

SWBT has proposed the same standards for Missouri that were approved by the FCC for Texas. As previously stated, the FCC relies on its *Accounting Safeguards Order and the Non-Accounting Safeguards Order* to discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its Section 272 affiliate.

As such, Staff is confident that SWBT complies with the section 272 requirements.[145]

Public Interest

Does Southwestern Bell Telephone Company meet the requirement of 47 U.S.C. § 272(g)(2) that grant of the authorization is consistent with the public interest, convenience and necessity?

Yes.

Aside from the fourteen-point checklist and other requirements, SWBT must also show that it is consistent with the public interest, convenience and necessity that it, or its affiliate, provision in-region, inter-LATA telephone exchange services in the state of Missouri.[146] The Act requires that incumbent local exchange carriers such as SWBT must open their networks to full, fair and effective competition.[147] The focus of the FCC's public interest analysis has been

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[143] *Memorandum Opinion and Order, In the Matter of Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina,* FCC 97-418, at ¶ 239 (1997).

[144] FCC Texas Order at ¶ 396.

[145] Staff's Response to Southwestern Bell Telephone Company's Updated Record, filed August 28, 2000, pp. 24-26.

[146] 47 U.S.C. § 271(d)(3)(C).

[147] 47 U.S.C. §§ 251-253 (1996).

on whether markets are open to competition.[148]

In its reply and additional response to the Commission's Question & Answer Session held in this case on October 11-12, 2000, the Staff stated its opinion that "SWBT's application is not currently in the public interest of the citizens of Missouri."[149] In that filing the Staff expressed a concern with the lack of residential customers being served by unbundled network elements in the state of Missouri and a strong concern with SWBT's commitment to competition in the state of Missouri. In particular, the Staff pointed out that SWBT intervened in virtually every CLEC application case where the applicant sought authority to compete in SWBT's LATA and forced the parties to execute a stipulation and agreement. The Staff also expressed concern with the marketing plans of Southwestern Bell Long Distance ("SBLD")[150] in the state of Texas and the implication that SBLD would limit its long distance offerings to some subset of Missouri citizens despite SWBT's broadsweeping pronouncements in its brief filed September 20, 2000, that "[t]hese substantial consumer benefits should shortly be available to the citizens of Missouri."[151]

Because SWBT still does not comply with the fourteen-point checklist it is still premature to address the issue of public interest. Further, the means that SWBT employs to become compliant with the fourteen-point checklist very well could impact the separate public interest analysis. However, because the Commission has indicated that it wishes the parties to

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[148] *SBC Texas Order*, at ¶ 417.

[149] Staff's Reply and Additional Response Comments to October Question & Answer Session, and to Interim Consultant Report, filed Nov. 2, 2000, p. 42.

[150] Based upon its application found in Case No. TA-99-47, it appears SBLD is a d/b/a for Southwestern Bell Communications Services, Inc.

[151] SWBT Reply Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Missouri, filed September 20, 2000, in Case No. TO-99-227, p. 2.

address all issues at this time, the Staff will state its position on public interest.

As indicated by the Staff in its reply and additional response to the Commission's Question & Answer Session held in this case on October 11-12, 2000, the Staff's concerns are related to SWBT's commitment to competition in the state of Missouri. The Staff is encouraged by SWBT's commitment made in its post-hearing comments to the Commission's November 8-9, 2000 Question & Answer Session filed November 30, 2000, that " SWBT will at this time refrain from intervening in future CLEC certification cases, so long as Staff undertakes to ensure that the end result of the certification process includes the imposition of a reasonable cap on access charges."[152] In light of this development the Staff is persuaded that at this time, if SWBT were compliant with the fourteen-point checklist, it would be in the public interest to grant SWBT section 271 authority in the state of Missouri.

[152] Southwestern Bell Telephone Company's Post Hearing Comments to the November 8-9, 2000 Hearings, filed in Case No. TO-99-227 November 30, 2000, p. 56.

PAST AND CURRENT COMMISSION CASES

ARBITRATION CASES

1) *In the Matter of AT&T Communications of the Southwest, Inc.'s Petition For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company and In the Matter of the Petition of MCI Telecommunications Corporation and Its Affiliates, Including MCImetro Access Transmission Services, Inc., for Arbitration and Mediation Under the Federal Telecommunications Act of 1996 of Unresolved Interconnection Issues with Southwestern Bell Telephone Company*, Case Nos. TO-97-40 and TO-97-67, aff'd in part and remanded in part, *sub nom AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Company et al.*, 86 F.Supp.2d 932 (W.D. Mo. 1999), appeal pending *sub nom Southwestern Bell Telephone Company v. Missouri Public Service Commission*, In the United States Court of Appeals for the Eighth Circuit, Nos. 99-3833 & 99-3908.

   On July 31, 1997, the Commission issued a Final Arbitration Order setting permanent rates for a number of UNEs to be provided by SWBT. The Commission set a discount of 19.2% for all but operator services and set a rate of 13.91% for them. On October 2, 1997, the Commission issued its order clarifying its July 31, 1997, order. The federal district court affirmed the Commission's order except to remand the issues of dark fiber and sub-loops as well as rendering SWBT liable for injuries to AT&T's customers caused by its negligence.

2) *In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-98-115.

   On December 23, 1997, the Commission issued a Report and Order resolving a number of issues and setting interim rates for some, but not all, of the UNE rates in dispute. As of this date, the Commission has not issued in this case an order establishing permanent rates for these UNEs. These UNE rates are relevant to TO-99-227; however, the Commission has ordered the parties to file an issues list by December 29, 2000, and proposed findings and conclusions by January 22, 2001.

3) *In the Matter of the Mediation and Arbitration of Remaining Interconnection Issues Between MCI Telecommunications Corporation and its Affiliates and Southwestern Bell Telephone Company*, Case No. TO-98-200.

   This originated as an interconnection agreement arbitration case initiated by MCI. Later MCI adopted the result of the AT&T/SWBT arbitration in

TO-98-115. SWBT opposed wholesale adoption on two grounds. The first ground was that MCI refused to agree to an addition regarding modifications to the TO-98-115 agreement that might occur due to appeal or other events, i.e., SWBT wanted an express provision that changes in the TO-98-115 agreement would modify the adopted terms of the MCI/SWBT agreement. The second ground was SWBT's position that portions of the TO-98-115 agreement pertaining to the combining and separating of unbundled network elements were based on an erroneous interpretation of federal law and, therefore, cannot be adopted by MCI. By order effective August 4, 1998, the Commission approved adoption of the agreement without modification.

3) *In the Matter of the Petition of Sprint Communications Company, L.P., for Arbitration of Unresolved Interconnection Issues Regarding xDSL with Southwestern Bell Telephone Company*, Case No. TO-99-461.

In this case, by order dated August 3, 1999, the Commission established prices for conditioning lines between 12,000 and 18,000 feet for xDSL service. The Commission accepted the rates proposed by SWBT, but discounted them by 19.2% and capped the cost for conditioning a line at $727.20.

4) *In the Matter of the Petition of DIECA Communications Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Case No. TO-2000-322.

In this case, by order dated March 23, 2000, the Commission established prices for loop qualification and loop conditioning costs as well as other ISDN related pricing and set costs based on the results from two other cases—Case No. TO-99-461 (Sprint arbitration) and TO-97-40 (AT&T arbitration). The Commission also imposed a quarterly reporting requirement on SWBT to show the total number of loops requested for xDSL services and the number of loops requested for xDSL based services and the number of loops requested that required conditioning by binder group and each entity requiring the loops or services. In response SWBT did not include loop provisioned to SBC Advanced Solutions, Inc. for the stated reason that those loops were provisioned through a line-sharing arrangement and, therefore, the affiliate did not "order any wholesale loops." By order effective November 3, 2000, the Commission ordered SWBT to provide information for line-shared loops in supplement of its prior reports and in future reports.

6) *Petition of BroadSpan Communications, Inc., for Arbitration of Unresolved Interconnection Issues Regarding Collocation with Southwestern Bell Telephone Company*, Case No. TO-2000-384.

This is a case initiated on December 23, 1999, by the petition of BroadSpan. The Commission set an expedited procedural schedule with post-hearing briefing to be completed by April 3, 2000. Case closed on 1/19/2000 due to withdrawal by BroadSpan.

7) *In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Case No. TO-2000-278.

This is a case initiated on October 15, 1999, by DIECA Communications for arbitration of an interconnection agreement with SWBT. Case closed on 10/29/99 due to dismissal by DIECA Communications.

8) *Petition of BroadSpan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-99-370.

By order effective June 22, 1999, in this case the Commission set nonrecurring charges for line conditioning by reducing the prices set by SWBT by 19.2%. The Commission also fixed other prices.

SWBT COLLOCATION TARIFF CASES

9) *Application of Allegiance Telecom of Missouri, Inc., CCMO, Inc. d/b/a Connect!, DSLnet Communications, LLC, KMC Telecom III, Inc. and New Edge Network, Inc. for an Order Requiring Southwestern Bell Telephone Company to File a Collocation Tariff and Joint Petition of Birch Telecom of Missouri, Inc. for a Generic Proceeding to Establish a Southwestern Bell Telephone Company Collocation Tariff Before the Missouri Public Service Commission*, Case Nos. TT-2000-527 & TT-2000-513.

These cases were filed on February 22 and February 25 of 2000, to require SWBT to file a collocation tariff and to establish the terms SWBT should be required to offer in a collocation tariff. After the filing of a collocation tariff by SWBT and suspension creating Case No. TT-2001-298, the Commission suspended the procedural schedule in these combined cases stating: "Because the issues raised in this case will be more efficiently addressed in Case No. TT-2001-298, the procedural schedule in this case will be suspended." These cases presently remain pending.

10) *In the Matter of Southwestern Bell Telephone Company's Proposed Tariff PSC Mo. No. 42 Local Access Service Tariff, Regarding Physical and Virtual Collocation*, Case No. TT-2001-298.

SWBT filed a collocation tariff on October 24, 2000, proposing physical and virtual collocation terms and conditions. The Commission suspended the tariff for review and denied a motion by the Staff for consolidation with Cases nos. TT-2000-513 and TT-2000-527 noting the differences in who has the burden of proof and stating: "Consolidating this case with Case Nos. TT-2000-527 and TT-2000-513 would likely create a confused record, and is unlikely to gain much administrative efficiency." This case is pending.

MCA CASES

10) *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483.

On March 22, 1999, the Staff filed a motion to open this case and to close Case No. TO-98-379 opened in response to a petition filed by certain LECs on March 9, 1998. In this case the Commission expressly ordered, effective September 19, 2000, that CLECs may participate in MCA service and competitively price that service, subject to the rates set in TO-92-306 as a cap. The Commission left the service bill-and-keep and indicated ILECs are permitted to exercise whatever pricing flexibility they have by law in provisioning MCA service. As to the competitive-related actions of SWBT with regard to MCA service, see the affidavit of Edward J. Cadieux filed in this case on or about August 28, 2000, at pages 7 to 20 (¶¶ 17-40) for a summary thereof.

11) *AT&T Communications of the Southwest, Inc. et al. v. Southwestern Bell Telephone Company*, Case No. TC-2000-15.

On July 13, 1999, AT&T filed a complaint against SWBT alleging that MCA subscribers in MCA Zone 3, not located within the immediate Fenton local calling scope, cannot call AT&T's Fenton customers toll free while similarly situated SWBT customers can and that this is a violation of SWBT's local exchange tariff. The Staff recommended the Commission not act in this case until Case No. TO-99-483 was resolved. By order dated December 11, 2000, the Commission ordered the parties to file a proposed procedural schedule for this case no later than January 25, 2001. The case is presently pending.

LOCAL PLUS CASES

13) *In the Matter of the Investigation into the Effective Availability for Resale of Southwestern Bell Telephone Company's Local Plus Service by Interexchange Companies and Facilities-Based Competitive Local Exchange Companies*, Case No. TO-2000-667.

This is a pending case with an evidentiary hearing scheduled for January 10, 11 & 12 of 2001. In this case, on November 21, 2000, the Commission issued an order directing SWBT to answer data requests that it opposed, in part, on the ground that they were beyond the scope of the case and irrelevant despite a Commission order that the issues were in the case. With the exception of one request that the Commission found to be overly burdensome, the Commission ordered SWBT to comply with the data requests.

14) *In the Matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan*, Case No. TT-98-351.

Commission rejects the tariff by order effective September 29, 1998.

15) *In the Matter of Southwestern Bell Telephone Company's Tariff Proposing to Refile Its Local Plus[7] Service and Requesting Expedited Approval*, Case No. TT-99-191.

Commission, by order effective December 5, 1998 denies motions to suspend or reject and allows the tariff to go into effect by operation of law.

16) *In the Matter of Southwestern Bell Telephone Company's Proposed Tariff to Introduce a Discount on the Local Plus® Monthly Rate*, Case No. TT-2000-258.

By order effective April 17, 2000, the Commission approved the future filing of a promotional tariff because more than 90 days from the effective date of the tariff filed had passed.

CLEC ACCESS RATE CAP CASES

17) *In the Matter of the Application of ExOp of Missouri, Inc. for a Certificate of Service Authority to Provide Local Exchange Telecommunications Services*, Case No. TA-97-193. (Order effective date of 12/15/98).

In this case SWBT opposed a tariff filed by ExOp for basic local service where the access rates exceeded those of SWBT although ExOp was not then providing service in the SWBT LATA and ExOp did have an

interconnection agreement with Sprint, but not SWBT. ExOp elected to eliminate SWBT exchanges from its area of service authority and the Commission so amended its basic local service authority.

18) *In the Matter of the Application of ALLTEL Communications, Inc. for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in Portions of the State of Missouri and to Classify Said Services and the Company as Competitive*, Case No. TA-99-298.

The parties presented a nonunanimous stipulation that SWBT did not join. The stipulation did not include language that capped ALLTEL's originating or terminating access rates at the lowest ILEC rate of any ILEC in which ALLTEL was authorized to provide service. In its order dated September 2, 1999, the Commission imposed a requirement that ALLTEL's originating and terminating access rates would be capped, in each ILEC service area where ALLTEL competed, by that ILEC's access rates.

19) *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596 (Report & Order effective 6/13/00).

The issues in this case revolved around originating and terminating access rates CLECs can charge others. The Commission determined as follows regarding the need for restrictions on access rates: "Given the locational monopoly enjoyed by LECs in the present state of the industry, the general absence of alternative routes by which IXCs can complete calls, and the experience of jurisdictions where no cap on access rates has been imposed, the Commission concludes that a cap on exchange access rates is reasonable and necessary in order for the service to be classified as a competitive service and for the Commission to suspend or modify the application of its rules or certain statutory provisions." In response to SWBT's position that regardless of the LATA in which a CLEC was offering services, the CLEC's access and terminating rates should be no greater than those of SWBT, the Commission expressly stated as follows: "An access rate cap at SWBT's rate level is both anticompetitive and a barrier to market entry because it places a significant competitive disadvantage on CLECs and discourages them from entering multiple ILEC service areas." On this issue the Commission concluded as follows: "Consequently, the Commission concludes that the public interest would be best served by capping CLEC exchange access rates at the level of the access rates of the directly competing ILEC."

Respectfully submitted,

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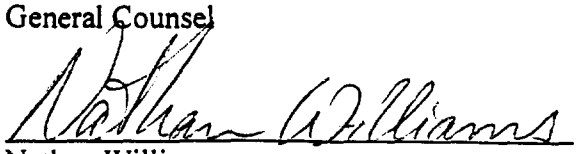

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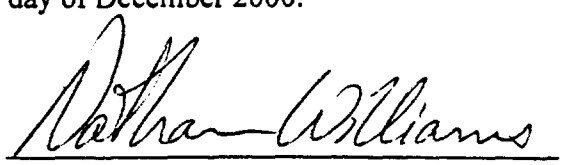
Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 22nd day of December 2000.



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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996.	)))))))	Case No. TO-99-227

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S MOTION TO RECONSIDER OR CLARIFY INTERIM ORDER AND COMMENTS REGARDING SWBT'S M2A COMPLIANCE FILING

On February 13, 2001, this Commission issued its Interim Order Regarding Missouri Interconnection Agreement ("Interim Order"), recommending that SWBT make certain modifications to its proposed "Missouri 271 Agreement" ("M2A") in order to receive this Commission's conditional recommendation to the FCC for approval of SWBT's application for long-distance authorization in Missouri. On February 16, 2001, SWBT filed its response to the Interim Order, attaching a revised form of M2A. AT&T makes this submittal in order (1) to identify certain aspects of the revised M2A that do not appear to conform to the Interim Order and (2) to request the Commission to reconsider and/or clarify the Interim Order in certain respects.

AT&T presents its comments in the order in which the affected provisions appear in the M2A.[1]

Comments

The revised form of M2A filed by SWBT February 16, 2001 includes several provisions that are inconsistent with the Commission's directions in the Interim Order or that go beyond the terms of that Order. The revised M2A also omits terms that, based on

very recent developments, must be offered by SWBT if it is to meet competitive checklist requirements. AT&T sets forth below those provisions that it has been able to identify in the limited time provided for review of the compliance filing. In view of the nature of the changes required by the Interim Order, including changes to many details of the complex price schedules in the M2A and numerous other changes, AT&T urges the Commission to consider carefully all issues raised by Staff and the parties related to the compliance filing. AT&T further urges the Commission to provide for subsequent reform of the M2A to conform to the Interim Order to the extent other errors or inconsistencies with the Interim Order may be discovered.

Attachment 1: Resale

The decision of the D.C. Circuit Court of Appeals in *ASCENT v. FCC* establishes that the incumbent local exchange carriers operated by SBC, such as SWBT, may not escape their section 251 resale and unbundling obligations related to advanced services by providing those services through a separate affiliate. As AT&T explains in its Response to Staff Report on 271 Developments, one clear import of this decision is that the xDSL services being provided in Missouri by SWBT's affiliate, ASI, must be made available to CLECs for resale at the avoided cost discount. For purposes of SWBT's section 251 resale obligations, *ASCENT v. FCC* means that the structural separation between SWBT and ASI must be disregarded, leaving SWBT with the section 251 obligation to make available for resale those telecommunications services that its affiliate currently provides or provides in the future. Whether SWBT makes those services directly available or causes ASI to make them available for resale at SWBT's wholesale

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[1] AT&T has simultaneously filed its Response to Staff Report on 271 Developments.

discount, the obligation to make the services available for resale lies with SWBT and must be included in the M2A.

Accordingly, AT&T recommends that the Commission require SWBT to add a provision at the end of Attachment 1, Resale, such as the following:

> In addition to the services listed in Appendix Services/Pricing, SWBT will make available to CLEC, for resale at the wholesale discount, all xDSL and other advanced telecommunications services provided in this state by its affiliate, Advanced Solutions, Inc. ("ASI"), or by any other affiliate of SWBT.

Attachment 6: Unbundled Network Elements – Appendix Pricing UNE Schedule of Prices

At least two sets of prices in the revised M2A UNE price schedule appear inconsistent with the recommendations of the Interim Order. Further, AT&T has been unable to locate anything in the revised UNE price schedule or elsewhere in the revised M2A that limits true-up for the interim UNE rates to a six-month period, as prescribed by the Interim Order.[2]

Nonrecurring charges for dedicated transport. For 95 UNEs that have not been reviewed by this Commission for conformance with FCC pricing standards, the Interim Order directed SWBT to offer these UNEs, on an interim basis, at rates that had been established in Texas and are included in the T2A. While SWBT generally has complied with this direction in its revised M2A, at least one important inconsistency is apparent.

[2] Under other headings, such as collocation and line sharing, the revised M2A does incorporate the six-month limit on true-up, but with terms that go beyond the Interim Order and should be excluded from the M2A, as further discussed below.

Among the 95 UNEs in this category are the rate elements for three classes of dedicated transport – voice grade, OC3 and OC12.[3] Each unbundled dedicated transport facility includes at least two rate elements – a termination charge and a mileage charge. For example, an OC3 dedicated transport facility in the urban zone has a monthly recurring charge for the termination of $ 1,381.04 and a monthly mileage charge of $27.85, according to the revised M2A. *See* Appendix Pricing UNE Schedule of Prices at 7.

In transferring the nonrecurring charges for these UNEs from the T2A to the M2A, SWBT made a change which might appear clerical but which, taken literally, would substantively alter the T2A pricing and improperly increase nonrecurring charges. In the T2A, the price schedule contains a specific dollar amount for the nonrecurring charge for the termination portion of the dedicated transport facility. For example, the T2A nonrecurring charge (first) for "OC3 Interoffice Transport – Urban Term." is $ 562.41. SWBT has incorporated that same rate in the revised M2A. *Id.* AT&T agrees that SWBT has incorporated the appropriate nonrecurring charges for the termination component of VG, OC3, and OC12 dedicated transport for all zones.

The problem arises in the nonrecurring charges for the mileage component of these facilities. Under the T2A, in the space provided for these nonrecurring charges, the following phrase appears: "Same as for Term." For example, the T2A nonrecurring charge (first) for "OC3 Interoffice Transport – Urban Mile" (corresponding to the

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[3] The revised M2A does not make clear which rates are based on Missouri Docket No. TO-98-115 and which are based on the T2A. The revised UNE rate schedule does include a note for each rate element. The schedule states that elements which are identified with a note "2" or "3" are interim, subject to true-up, but does not identify the source of the rates. It appears that note 2 is associated with the rate elements taken from TO-98-115 and that note 3 is associated with the rate elements that are based on T2A rates. It would be helpful if the Commission were to require SWBT to identify the source of the rates in the explanatory footnotes on page 12 of the revised UNE pricing schedule. (As further discussed below, SWBT may have misclassified certain rates as well, using "ICB" rates from TO-98-115 rather than specific T2A rates).

example in the paragraph above) reads "Same as for Term." In the revised M2A, however, SWBT has not repeated that phrase. Instead it has substituted the same number that was found in the T2A under the nonrecurring charge for the termination component – in this example, $ 562.41. The following table illustrates the difference in the way these charges appear in the T2A and the revised M2A.

	Monthly Rate		Nonrecurring Rate (First)		Nonrecurring Rate (Second)	
	T2A	M2A	T2A	M2A	T2A	M2A
OC3 Interoffice Transport –Urban Term.	1381.04	1381.04	562.41	562.41	276.80	276.80
OC3 Interoffice Transport – Urban Mile	27.85	27.85	Same as for Term.	562.41	Same as for Term.	276.80

The difference is substantive. Under the T2A, a CLEC who purchases an unbundled OC3 dedicated transport facility does not pay one $ 562.41 nonrecurring charge for the termination and another $ 562.41 charge for the mileage component. Rather, the phrase "Same as for Term." in this context means that there is no separate nonrecurring charge for the mileage component of the facility. One nonrecurring charge of $ 562.41 covers both the termination and the mileage.

By substituting the dollar amount of the termination charge for the phrase "Same as for Term.," SWBT has doubled the size of the interim nonrecurring charge for these dedicated transport facilities (or, if SWBT sought to collect this nonrecurring charge on a per mile basis, it will have greatly multiplied the nonrecurring charges). That approach should be rejected. It is not plausible that the nonrecurring costs associated with the

mileage component of a transport facility will match the costs associated with the termination of that facility.

In order to conform the interim M2A charges to the T2A for these elements, SWBT should be directed to substitute the phrase "Same as for Term." in the place for nonrecurring charges (first and additional) for the mileage element of the affected dedicated transport facilities. These include voice grade, OC3, and OC12, in all zones, as well as the interzone charges.[4] Appendix Pricing UNE Schedule of Prices at 7-8.

Charges for OC48 Transport. SWBT's revised M2A price schedule includes only 87 rate elements in category 3, rather than the total of 95 elements referenced in the Interim Order. For OC48 dedicated transport and the corresponding cross connect, the revised M2A shows "ICB" rates and classifies each of these elements with note "2", which appears to be SWBT's reference to TO-98-115. *See* Appendix Pricing UNE Schedule of Prices at 8. The T2A does contain specific rate elements for OC48 transport, rather than ICB pricing. If the Commission's intent in the Interim Order was to include OC48 transport and cross connects in the set of elements for which Texas pricing should apply on an interim basis, then SWBT should be directed to further revise the M2A UNE price schedule accordingly.

True-up limitation. The revised price schedule contains clarifying notes which explain that the items in categories 2 and 3 are subject to true-up. *See id.* at 12. However, these notes do not limit true-up to a six-month period, as required by the Interim Order, and there does not appear to be any other provision in the redlined M2A (Attachment B to SWBT's February 16 response) that applies the six-month limitation to

[4] The facts set forth above regarding application of the nonrecurring charges for dedicated transport under the T2A have been provided in consultation with Steve Turner, who served as AT&T's expert on this subject during the

the interim UNE rates. (Other terms of the revised M2A, discussed below, do apply that limitation to other interim rates, e.g., collocation and line sharing, and contain additional problematic terms).

While the Interim Order was clear that retrospective true-ups are to be limited to six months (p.8), a CLEC who subsequently signed a form of M2A that provided for true-up of interim UNE rates but did not contain such a limitation would be exposing itself to the argument that it had voluntarily agreed, as a matter of contract, to forego such a limitation. For this reason the M2A needs to be explicit that the true-up limitations contained in the Interim Order apply to the interim UNE rates (and the other interim rates provided for in the Interim Order). This could be accomplished be adding an appropriate provision to Appendix Pricing UNE, which precedes the price schedule itself in the M2A, or, more simply, by adding this sentence at the end of notes 2 and 3 on page 12 of the UNE price schedule: "Retrospective true-up will be limited to six months as provided in the February 13, 2001 Interim Order in Docket No. TO-99-227."

Excessive interim rates. Even with the corrections noted above, the M2A still will leave Missouri CLECs in the position of attempting to do business at present on the basis of UNE rates that are interim in very large part. The interim rates taken from TO-98-115 and from the T2A do not apply merely to a few newly-recognized elements, for which interim rates might be expected and appropriate, but to a large proportion of the UNE rate schedule. The interim rates include nonrecurring charges associated with simple migration of a SWBT retail customer to the UNE platform, *see* Attachment 6, Appendix Pricing UNE, Exhibit 1, and nonrecurring charges associated with any of the

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Texas cost proceedings. Should SWBT contest this explanation, AT&T requests the opportunity to establish these facts by affidavit.

features that might be included with the use of unbundled switching. They include all optical dedicated transport rates. As further discussed below, they also include all physical and virtual collocation rates. The cumulative impact of these interim rates is to put too many question marks into any CLEC business plan. They leave serious, competition-inhibiting uncertainty over the Missouri local marketplace until permanent rates have been set. SWBT should not be found to comply with checklist items one and two until something closer to a comprehensive set of collocation and UNE rates has been established.

Attachment 13: Physical And Virtual Collocation Appendices

True-up terms. SWBT appears to have complied with the Commission's direction to amend the M2A to offer "interim prices identical to those in the Texas agreement that has been approved by the FCC" and the "same terms and conditions for collocation that were offered in the Kansas agreement." The exception can be found at p. 59 of the Physical Collocation Appendix and p. 11-12 of the Virtual Collocation Appendix, which sections address the true-up of rates and charges. Specifically, in these provisions, SWBT provides not only that the rates contained in the Collocation Appendices are interim and subject to true up, but further that "[a]ny refund or additional charges due as a result of true up shall be paid within thirty days of the effective date of the Commission's order" adopting permanent rates. Nowhere has the Commission or the parties addressed the period in which the true up shall be paid or refunded. Accordingly, it would be inappropriate for SWBT's unilateral language to be inserted in the M2A. The appropriate period for payment or refund of the true up can be addressed by SWBT in the permanent collocation proceeding and by the Missouri Commission in the permanent

order establishing rates, terms and conditions. Accordingly, SWBT should be required to remove this sentence from page 59 of the Physical Collocation Appendix and page 12 of the Virtual Collocation Appendix.[5]

In addition, SWBT's true-up language states that true-up "shall not include any period prior to the effective date of this agreement with CLEC." This phrase is not found in, or authorized by, the Interim Order. The phrase appears to be an attempt to resolve in SWBT's favor a seriously disputed issue in the collocation proceedings, namely, whether the excessive ICB collocation rates that CLECs have been paying in Missouri to date to SWBT should be subject to true-up and refund once permanent rates are set. That issue should be decided by the Commission on the merits in the collocation proceedings, not by clever draftsmanship in an M2A revision subject to one week's review in these proceedings. The phrase should be stricken from the collocation appendices in the M2A.[6]

SWBT's proposed permanent collocation terms foreclose a finding of compliance with checklist item one. Moreover, even though SWBT has complied with the Commission's direction to offer Kansas collocation terms and conditions and Texas prices on an interim basis in the M2A, those revisions alone should not be deemed to constitute compliance with checklist item 1. In the pending permanent collocation proceeding, **Case No. TT-2001-298, SWBT is proposing drastically different terms,** conditions and rates for collocation that vitiate the interim terms, conditions and rates that SWBT has now proposed in the M2A.

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[5] As will be noted below, SWBT has inappropriately included this payment term in other true-up references in the revised M2A, e.g., line sharing and line splitting, and it should be removed there as well, again leaving it to the Commission to set appropriate payment terms when it makes the relevant rate decisions.

[6] It also should be stricken from the other true-up provisions in which it appears in the revised M2A, noted below, including line sharing and line splitting.

For example, under SWBT's proposed tariff in the permanent collocation proceeding, SWBT no longer provides the Cage Preparation elements as part of its responsibilities for Physical Caged Collocation. Instead, SWBT requires that the CLEC "must construct its own cage and install related equipment." The "normal" process in Texas is that SWBT constructs the collocation arrangement. CLECs have the option to construct their own cages, but the normal process and the structure of the rate elements is for SWBT to construct the collocation arrangements including the cages. The problem with SWBT's approach in Missouri is that it easily allows SWBT to over-recover its costs and is inefficient. SWBT has a rate element – Cage Common Systems Materials Charge – that includes many of the elements necessary to construct a collocation cage such as overhead lighting above the collocation arrangement.[7] Nevertheless, in Section 20.3 of SWBT's proposed Missouri Physical Collocation Tariff, SWBT requires the CLEC to construct the cage and install related equipment. There is no clear delineation between what the CLEC will need to do and pay for and what SWBT is charging for, since it appears that SWBT is including some of the same work in its own rate element. Moreover, electrical work should not be separated between two different activities in that many of the functions that must be performed for electrical work – conduit placement, wiring, fusing, and others – can be shared among work done for lighting, AC electrical outlets, and switching and could be more efficiently accomplished at one time and as part of one rate element.

A second significant concern with SWBT's proposed Missouri collocation tariff is that it eliminates SWBT's obligation to provide cabling between key interconnection points in the central office such as between the collocation cage and the voice grade,

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[7] *See* Expanded Interconnection Service, SBC Corporation, SBC Cost Methodology: Collocation, p. 23.